

Title	Rules on Accounts or Reports in Decedent's Estates with Non-Resident Beneficiaries, and on Petitions for Distribution in all Decedent's Estates (adopt rules 7.551, 7.651-7.652)
Summary	Proposed rule 7.551 would address the requirement of a state income tax clearance certificate in larger decedent's estates with non-resident beneficiaries, and proposed rules 7.651–7.652 would require specific allegations in petitions for distribution in all decedent's estates.
Source	Probate and Mental Health Advisory Committee
Staff	Douglas C. Miller, 415–865–7535, douglas.miller@jud.ca.gov
Discussion	<p><u>Rule 7.551.</u></p> <p>Proposed rule 7.551(a) would prohibit court approval of a final account in a decedent's estate with an appraised value larger than \$1,000,000 and with non-resident beneficiaries who have received or will receive an aggregate distribution in excess of \$250,000, until the personal representative files the tax clearance certificate of the Franchise Tax Board showing that all state income taxes, penalties, and interest payable by the decedent or the estate have been paid or that payment has been secured. Under subdivision (c) of the rule, if the certificate has an expiration date, the account or report could not be approved after that date unless and until a new or revised certificate is first filed.</p> <p>This proposed rule would disclose to practitioners, personal representatives and courts, the requirements of Revenue and Taxation Code section 19513 and the Franchise Tax Board's regulations, particularly Cal. Code Regs., tit. 18, § 19513. That regulation establishes the minimum values of the estate and the non-resident beneficiaries' aggregate distribution provided for in the rule.</p> <p>The rule would also fill a gap in the coverage of the statute in a way that is consistent with the statute's purpose. Section 19513 expressly forbids court approval of a final account in an affected estate if the certificate has not been filed. The advisory committee believes, however, that the Legislature intended the certificate requirement to apply to all affected estates, whether or not a final account has been waived. Proposed rule 7.551(b) also would apply the certificate requirement to a final report, thus reaching an affected estate where the beneficiaries have waived the final account. In that circumstance, the decedent's personal representative must still file a final report and the</p>

court must still approve it. (See Prob. Code, § 10954(a) and (c), and California Rules of Court, rule 7.550.)

Subdivision (c) of the rule would advise the personal representative of the consequences of failing to obtain court approval of the final account or report before the expiration date of a tax clearance certificate.

Rule 7.551 is based on existing local rules in many courts, including Los Angeles and San Francisco (See Superior Court, County of Los Angeles Local Rules, rule 10.111, and Superior Court, County of San Francisco Local Rules, rule 14.85A).

Rules 7.651–7.652.

The statutes that authorize petitions for preliminary and final distributions from decedents' estates, Probate Code sections 11600–11642, do not state exactly what must be said about the property to be distributed or the property to remain in the estate at the time of a preliminary distribution. However, an order authorizing a distribution must include a complete description of the property to be distributed. Local rules have been the principal means of ensuring that the court has enough information about the property in an estate to frame an appropriate and detailed distribution order.

Proposed rule 7.651, based on existing local rules in Los Angeles and San Francisco (Superior Court of California, County of Los Angeles Local Rules, rule 10.126; Superior Court of California, County of San Francisco Local Rules, rule 14.95E), would supplement the statutory provisions by requiring that specific and detailed information about real and personal property to be distributed must be included in a petition for preliminary or final distribution or in an accounting filed with the petition.

Proposed rule 7.652 would specify the showing that must be made in a petition for preliminary or final distribution from a decedent's estate when the distribution may be affected by the character—community, quasi-community, or separate—of the property to be distributed. The rule would require the petition to allege that character, and then state whether community or quasi-community property to be distributed represents the decedent's share of the property only, or the interest of both spouses. If the latter, subdivision (c) of the rule would require the petition to demonstrate compliance with Probate Code section 13502, concerning the election of a surviving spouse to administer property.

A copy of proposed rules 7.552 and 7.651–7.652 is attached at pages 4–5.

Attachment

Rules 7.551 and 7.651–7.652 of title 7 of the California Rules of Court would be adopted, effective January 1, 2004, to read:

Chapter 12 Accounts and Reports of Executors and Administrators

Rule 7.550. * * *

Rule 7.551. Final accounts or reports in estates with non-resident beneficiaries.

- (a) **[Final account]** Under Revenue and Taxation Code section 19513 and the regulations of the Franchise Tax Board, the court must not approve a final account in an estate that has a total appraised value greater than \$1,000,000 and from which more than \$250,000 in the aggregate has been distributed or is distributable to beneficiaries who are not residents of California, until the executor or administrator has filed the Franchise Tax Board’s state income tax certificate showing that all state personal income taxes, additions to tax, penalties and interest imposed on the estate or the decedent have been paid, or that payment has been secured.
- (b) **[Final report]** If a final account is waived under Probate Code section 10954 in an estate described in (a), the court must not approve the final report required by section 10954(c)(1) until the executor or administrator has filed the Franchise Tax Board’s state income tax certificate showing that all state personal income taxes, additions to tax, penalties and interest imposed on the estate or the decedent have been paid, or that payment has been secured.
- (c) **[Expiration date of certificate]** If the certificate described in (a) or (b) is issued on the condition that the final account or report must be approved before a date specified in the certificate, the court must not approve the final account or report after that date unless the executor or administrator first files a new or revised certificate.

Chapter 14 Preliminary and Final Distributions

Rule 7.650. * * *

Rule 7.651. Description of property in petition for distribution

- (a) A petition for distribution must list and describe in detail the property to be distributed, in the body of the petition or in an attachment that is incorporated by reference in the petition. If an account is filed with the petition, the description must be included in a schedule in the account.

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2 **(b)** The description under (a) must:

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4 (1) Include the amount of cash on hand;

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6 (2) Indicate whether promissory notes are secured or unsecured, and must
7 describe in detail the security interest of any secured notes; and

8
9 (3) Include the complete legal description, street address, and the Assessor's
10 Parcel Number of real property.

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12 **Rule 7.652. Allegations in petition for distribution concerning character of property**

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14 **(a)** If the character of property to be distributed may affect the distribution, a
15 petition for distribution must allege:

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17 (1) The character of the property to be distributed, whether separate,
18 community, or quasi-community; and

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20 (2) That the community or quasi-community property to be distributed is
21 either the decedent's one-half interest only, or the entire interest of the
22 decedent and the decedent's spouse.

23
24 **(b)** If the community or quasi community property to be distributed is the entire
25 interest of the decedent and the decedent's spouse, the petition must also
26 allege, and the court file must show, compliance with the provisions of Probate
27 Code section 13502, concerning the election of a surviving spouse to
28 administer property.